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Γ	APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
_	10/008,716	11/13/2001	Jonathan S. Stinson	23,369-134	5960
	23452	7590 08/08/2005	EXAMINER		
	PATENT DI	EPARTMENT	BARRETT, 1	BARRETT, THOMAS C	
	LARKIN, HO	FFMAN, DALY & LII	<u> </u>		
	1500 WELLS	FARGO PLAZA	·	ART UNIT	PAPER NUMBER
	7900 XERXE	S AVENUE SOUTH	3738		
	BLOOMING'	TON, MN 55431			

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHONTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ∫ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION Enteroided therm by the sendial use of the provision of 30°FR 1.18(a). In no event, horavers, may a reply be finely filed - file period for reply specified above is less than thinky (09) depts, a reply within the stitutiony minimum of this (20) depts will be considered limitaly file period for reply specified sizes is less than thinky (09) depts, a reply within the stitutiony minimum of this (20) depts will be considered limitaly file period for reply specified above is less than thinky (09) depts, a reply within the stitutiony minimum of this (20) depts will be considered limitaly file period for reply specified sizes is the thinky (09) depts, a reply within the stitutiony minimum of this (20) depts will be considered limitaly file period for reply specified sizes is the thinky (09) depts, and the stitution minimum of this (20) depts will be considered limitaly file period for reply specified sizes is the stitution of the stitution of this (20) depts will be considered limitaly file period for reply specified and the mailing date of the stitution of this (20) depts will be considered limitaly file period for reply specified and the mailing date of the stitution, even if timely filed, may reduce any states of the stitution of the stitution is not filed.  1) Responsive to communication (s) filed on		Application No.	Applicant(s)						
Thomas C. Barrett  3738  Feriod for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MALLING DATE Of THIS COMMUNICATION.  1 Element of this may be available useful in a provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filted all sets (%) MONTHs from the smalling date of the communication.  1 (the period for reply specified show is been beautherly (50) days, a slepty willing the ester communication of the may be willing the smalling date of the communication.  2 (the period for reply specified show is been beautherly (50) days, a slepty willing the set of the period of the communication of the major of the specific shows and the communication.  3 (the period for reply shows the set of the period of the communication, even if finely filted, may reduce any setting plant the equipment of the specification, even if finely filted, may reduce any setting plant the equipment of the setting the setting plant of the communication, even if finely filted, may reduce any setting plant the equipment of the setting plant of the communication of the major date of the communication, even if finely filted, may reduce any setting plant the equipment of the major date of the communication, even if finely filted, may reduce any setting plant the setting plant of the communication of the major reduced the communication of the		10/008,716	STINSON ET AL.						
- The MAIL/MG DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  • Estensions of time may be available useful the provision of 37 CFR 1.13(a). In or event, however, may a reply be timely filed  • If the period for reply specified above is less than him? (00) days, as reply within the statutory minimum of thirty (03) says will be considered timely.  • If the period for reply specified above is less than him? (00) days, as reply with the statutory minimum of thirty (03) says will be considered timely.  • If the period for reply specified above is less than him? (00) days, as reply with the statutory minimum of thirty (03) says will be considered timely.  • If the period for reply specified above is less than him? (00) days, as reply with the statutory minimum of thirty (03) says will be considered timely.  • If the period for reply specified above is less than him? (00) days, as reply with the statutory minimum of thirty (03) says will be considered timely.  • If the period for reply specified above is less than him? (00) days, as reply with the statutory minimum of thirty (03) says will be considered timely.  • If the period for reply specified above is less than him? (03) days will be considered timely.  • If the period for reply specified above is less than him? (03) days will be considered timely.  • If the period for reply specified above is less than him? (03) days will be considered timely.  • If the period for reply specified above is less than him? (04) days and the considered timely.  • If the period for reply specified above is less than him? (04) days and the considered timely.  • If the period for reply specified above is less than him? (04) days and the considered timely and the c	Office Action Summary	Examiner	Art Unit						
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THE MAILING DATE OF THIS COMMUNICATION.  Entendent dise may be available under the provision of 31 CFR 1.13(a). In no event, however, may a reply be limby filed aller SIX (S) MONTHS from the mailing date of this communication.  Falsure to reply wells the mailing date of the communication.  1 No period or mayle is pecified above, the maximum allustory gener dutility part and transpire (S) (MONTHS from the mailing date of this communication.  Falsure to reply wells the sector extended period for reply will, by statule, cause the application to become ABANDONED (35 U.S.C. § 130). Any rophy received by the Office date from three mailing date of this communication, even if timely filed, may reduce any senter better adjustment. See 37 CFR 1.74(b).  Status  1) Responsive to communication(s) filed on									
1) Responsive to communication(s) filed on	THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any								
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3   Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)   Claim(s) 35-53,56-60,64-68 and 71-86 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5)   Claim(s) is/are allowed. 6)   Claim(s) is/are rejected. 7)   Claim(s) is/are objected to. 8)   Claim(s) is/are objected to. 9)   The specification is objected to by the Examiner. 10)   The drawing(s) filed on is/are: a)   accepted or b)   objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in aboyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11)   The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12)   Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a)   All   b)   Some * c)   None of: 1   Certified copies of the priority documents have been received. 2   Certified copies of the priority documents have been received in Application No 3   Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Altachment(s) 1)   Notice of References Cited (PTO-992)   Paper Nots/Mail Date	1) Responsive to communication(s) filed on	<u>_</u> .							
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	U.S. Patent and Trademark Office		Part of Paper No./Mail Date 080305						

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## **DETAILED ACTION**

## Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention: Fig. 4a, 4b, 4c or 7. A further election of one of the following subspecies is also required: wherein the marker is coated with a radiopaque material, or the marker has a reservoir to receive the radiopaque material.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 35 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Frederick Niebuhr on August 3, 2005 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas C. Barrett whose telephone number is (571) 272-4746. The examiner can normally be reached Tuesday-Friday between 9:00 A.M. and 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas Barrett

Examiner

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